

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHNSON CARTER,

Plaintiff,

v.

JILL FALSTAD, ROSA DELGADO
AND MARATHON COUNTY, WISCONSIN,

Defendants.

OPINION AND ORDER

14-cv-607-wmc

Plaintiff Johnson Carter filed this proposed action pursuant to 42 U.S.C. § 1983 against Marathon County, Wisconsin, Marathon County District Attorney Jill Falstad and Assistant District Attorney Rosa Delgado, purporting to challenge the validity of a state court conviction and sentence. While he has been found eligible to proceed without prepayment of the filing fee in this case, because Carter proceeds *in forma pauperis*, the court is required to screen the proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(b). In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, the court must deny leave to proceed further and dismiss this case as legally frivolous.

ALLEGATIONS OF FACT¹

In Marathon County Case No. 03CF770, Carter was charged with stalking, as well as 15 counts of victim intimidation. In March 2004, Carter was convicted pursuant to his guilty plea to the stalking count in that case. Carter was also convicted in Marathon County Case Nos. 02CF232, 02CF489, 03CF88, 03CF473, 03CM575, 03CF623, 03CF624, and 03CF771 of battery during an incident of domestic abuse, false imprisonment, victim intimidation, contempt, carrying a concealed weapon, bail jumping, possession of drug paraphernalia and failure to comply with sex offender reporting requirements, among other charges. Pursuant to a plea agreement in these cases, the circuit court imposed an aggregate 22-year sentence, consisting of 11 years of initial confinement and 11 years of extended supervision. In a joint proceeding, these convictions were affirmed by the Wisconsin Court of Appeals in an unpublished opinion. *See State v. Carter*, 2010 WI App 135, 329 Wis. 2d 709, 790 N.W.2d 542. Thereafter, the Wisconsin Supreme Court denied Carter's petition for review.

Carter was released from prison on September 2, 2014. Carter now claims that he was subjected to "false imprisonment" because the Marathon County Circuit Court improperly found that he was a repeat offender. He further claims that his sentence of

¹ For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts. The court has also supplemented the facts with dates and procedural information about plaintiff's underlying criminal proceedings from public records available at Wisconsin Circuit Court Access, <http://wcca.wicourts.gov> (last visited September 12, 2014). The court draws all other facts from the complaint and the attached exhibits, which are deemed part of the pleadings. *See* FED. R. CIV. P. 10(c); *see also Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim).

extended supervision is unlawful because it exceeds the statutory maximum.² Carter seeks compensatory and punitive damages for each day he spent in prison in Case No. 03CF770.

OPINION

Assuming that all of Carter's allegations are true, he still cannot proceed with a claim under 42 U.S.C. § 1983. To recover damages for a prisoner's "unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," the plaintiff must prove "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A claim for damages that bears a relationship to a conviction or sentence that has not been so invalidated is uncognizable under 42 U.S.C. § 1983. *Id.* Since a judgment in favor of the plaintiff Carter here would "necessarily imply the invalidity of his conviction or sentence," Carter's complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. *Id.*

² This latter claim is based on a notice apparently sent to the Marathon County Circuit Court in June of 2014 by a records supervisor with the Wisconsin Department of Corrections ("WDOC"), which advised that Carter's punishment in Case No. 03CF770, consisting of two years of confinement and three years of extended supervision, exceeded the statutory maximum allowed for a Class I Felony. Specifically, the record supervisor noted that "the extended supervision portion of a Class I Felony committed after February 1, 2003, may not exceed 2 years."

Carter's allegations would, if true, necessarily implicate the validity of his conviction in Case No. 03CF770. Public records confirm that the conviction and sentence have not been invalidated or set aside by an authorized state tribunal or by a federal habeas corpus proceeding under 28 U.S.C. § 2254. Absent a showing that the disputed conviction has been invalidated or set aside, the rule in *Heck* precludes his claim for damages as well. Because his claims are barred, the court must deny leave to proceed and dismiss this case as legally frivolous. *See Moore v. Pemberton*, 110 F.3d 22, 24 (7th Cir. 1997).

ORDER

IT IS ORDERED that plaintiff Johnson Carter's request for leave to proceed is DENIED and his complaint is DISMISSED without prejudice as legally frivolous.

Entered this 25th day of June, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge